

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 10,502
BRIEF FOR APPELLANTS AND
JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

WILLARD J. HALL, ET AL., *Appellants*

VS.

E. A. GINETTI, *Appellee*

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED FEB 2 1951

Fryd W. Stewart

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**Appeal from the United States District Court
for the District of Columbia**

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QUESTIONS TO BE ANSWERED

1.

Where a real estate broker sells a property owned by him in a straw name to his principal at a price set by the broker which price exceeds the price at which the broker acquired the property without revealing such facts to his principal must the broker return to the principal the difference between the price at which the broker acquired the property and at which he sold it to the principal?

2.

Where a real estate broker sells property owned by him in a straw name to his principal at a price set by the broker which price exceeds the price at which the broker acquired the property without revealing such facts to his principal, and takes back as part of the purchase price a promissory note secured by a deed of trust in which the broker is a trustee, must the broker and trustee thereafter satisfy said note and release said deed of trust upon the payment of an amount which equals the purchase price to the broker of the real estate even though such amount is less than the face amount of the note?

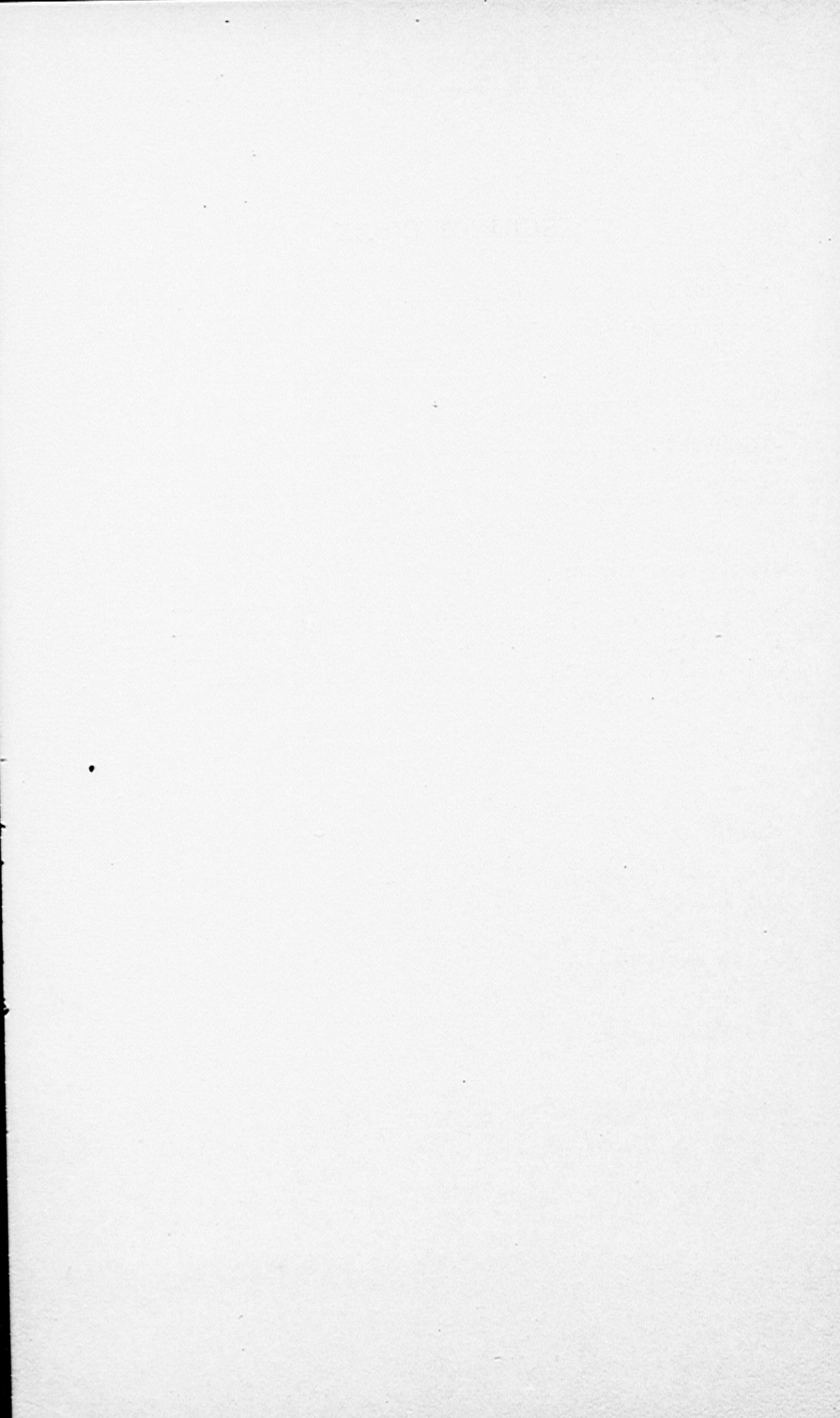
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VS.

E. A. GINNETTI, *Appellee*

**Appeal from the United States District Court
for the District of Columbia**

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the United States District Court for the District of Columbia. This Court has jurisdiction by virtue of section 17-101 of the 1940 D. C. Code; Act of February 9, 1893, 27 Stat. 435, Ch. 74, Para. 7, March 3, 1901, 31 Stat. 1225 Ch. 854, Para. 226 and subsequent amendments thereto.

STATEMENT OF THE CASE

The appellants, hereinafter called plaintiffs, at the time of the action were the owners of 4614 15th Street, N. W., Washington, D. C. In March or April of 1947 they engaged the defendant E. A. Ginnetti to represent them in the purchase of a house in the District of Columbia. On May 14, 1947 the plaintiffs through Ginnetti entered into a contract with the defendant Alele Pugliese, who was a straw party for Ginnetti, to purchase the above property for the sum of \$18,500, payable \$1500 in cash, assumption of an existing first deed of trust in the sum of \$11,500 and the execution and delivery of a purchase money trust and note in the sum of \$5,500, payable at the rate of \$100 per month.

In the deferred purchase money trust, the defendants T. Yates Goldsborough and E. A. Ginnetti were named as trustee. E. A. Ginnetti was in truth and fact the owner of the property purchased by the plaintiffs and the owner of the deferred purchase note of \$5,500. The price set for the property of \$18,500 was the price set by Ginnetti.

Ginnetti purchased the property on February 28, 1947 from N. Monica Dwyer, Adelaide D. Ewell and Mary D. Scott for the sum of \$14,750 subject to a brokerage commission of \$737.50 of which commission Ginnetti received \$368.75, so that the property actually cost Ginnetti the sum of \$14,381.25.

When the plaintiffs became in default in the payments on the deferred purchase note, the defendant attempted to foreclose the property, and the plaintiff filed an action to restrain the foreclosure, for a reformation of the contract, and other relief. At the trial the Court found the facts as set forth above, and allowed the plaintiffs a judgment of \$1,000 which was set off against the balance due

on the deferred purchase note, and required the plaintiff to pay the balance then remaining due.

SUMMARY OF ARGUMENT

1.

A real estate broker is an agent for his principal and owes to him the duty of exercising the utmost fidelity. He can not make a profit upon a sale to his principal of his own property without first disclosing all of the facts to the principal and then securing his knowing consent to such an arrangement.

2.

When a person who is trustee under a deed of trust to secure the payment of a note is the owner thereof, he is bound to cancel such note and release the trust securing such note, upon payment to him of the amount for which he acquired the note. He is not allowed to profit at the expense of his beneficiary.

ARGUMENT

The facts of the matter are extremely simple and are set forth succinctly in the findings of fact set forth in the appendix as having been attached to the order dissolving the preliminary injunction. The statement of facts elaborate slightly on the findings of fact, but merely for the purpose of explanation. Assuming the truth of the findings of fact, that the defendant was the agent of the plaintiffs; that he did sell to them his own property, at an increase in price over that which he paid for the property, without disclosure of any facts, what is his obligation to his principal?

It is a basic tenet of the law of fiduciaries, that a fiduciary owes to his principal the duty of exercising the ut-

most fidelity. This rule is too elementary to require citation of authority.

So far does the rule go that the courts have held that an agent may not buy or sell to his principal without disclosure of the fact that he is buying or selling and making a complete disclosure thereof.

2 Am. Ju. 205, Agency 254.

Sim v. Edenborn, 242 U. S. 131, 61 L. ed. 199.

Fox v. Patterson, 43 App. D. C. 484.

When the agent violates this duty to his principal and sells to the principal land which the agent owns but which fact is concealed from his principal, and the land is sold as though it had to be purchased upon the open market, what remedies are left to the principal? Is the principal left only to the remedy of rescission, or does he also have the right to affirm the contract, and sue for damages, as is the rule in other types of fraud cases? In the event he can sue for damages, what is the measure thereof?

It is submitted that the measure of damages is the full profit made by the agent on the transaction. In the case of *Bateman v. Ferguson*, 1 App. D. C. 279 Bateman acting for himself and others purchased a piece of ground for \$50,500. Thereafter, he interested Ferguson and others in forming a syndicate to buy the land with him for \$65,000, which they did. Before all of the lots in the subdivision were sold, Ferguson filed a bill against Bateman for an accounting. In the answer to the bill, Bateman said he had purchased the land with his own money prior to the sale to the syndicate. The case was referred to the auditor, and the court instructed the auditor that Bateman was not to account for the difference between the original price of \$50,500 and the sale price of \$65,000. The principal appealed from the final judgment in the case and the Court reversed, holding as follows:

"It is the contention of the appellants that Bateman occupied such a fiduciary relation to them . . . as that he could not, in equity and good conscience retain from them the difference between the \$50,500 actually paid to Sherman and the \$65,000 charged them. . . .

On the other hand, Bateman contends that he made the purchase from Sherman for himself and as trustee for Leonard and Miss Carr, without reference to the parties afterwards taken into the syndicate formed by him . . . and that complainants have no right to complain or hold him to account for any part of the profit made by him in the transaction.

* * * *

Having shown by his answer that he had in reality purchased the land from himself and his first set of associates . . . for himself and the second set, was it not incumbent upon him under such circumstances to go further and show that he had made the profit under such circumstances as that a court of equity would permit him to retain it . . . ?

The relation between him and the other members of the syndicate was not, technically, that of trustee and beneficiaries, nor of principal and agent. The latter, however, is practically the relation existing between them. . . .

Equity will not permit one occupying this relation to others to make a profit in dealing with them. They have their option to rescind or claim thier share of the profit.

. . . we are of the opinion that the defendant Arthur E. Bateman should account to the complainants for their due proportion of whatever profit he may have actually made of this transaction. His conduct towards those who confided in him has been such as no court of equity could have refused to condemn."

In a leading New Jersey case, *Conant v. Pettit*, 106 A. 469, N. J. 1919, a broker secured an option to purchase certain stock at \$17,500. He thereafter interested the plaintiff in its purchase at \$55,000 and was engaged by the plaintiff to acquire the stock for him at that price.

The broker purchased the stock at \$17,500 and sold it to the purchaser at \$55,000, payable \$10,000 cash and balance in notes.

In the action by the purchaser against the broker to make him account for the profit, the Court said:

“The bargain which the agent makes with the vendor is for the benefit of his principal, and the latter is entitled to the fruits of the bargain. The price paid for the purchase is paid on account of the principal, and both the law and common fairness require the agent to turn over the property purchased at the price for which he acquired it. If he misleads his principal, and by concealment, or other artifice obtains from him a sum greater than the purchase price, the principal is entitled, upon discovering the fraud, to require the agent to refund to him the excess.”

It is a matter of sound public policy that an agent may not profit at the expense of his principal. The fact that the principal may have only paid the fair market value of the land is not important, nor even that he secured the land at a bargain price. The public policy requires and demands that an agent not profit at his principal's expense but that he lend every effort to further the interests of the principal. If he defaults in this duty, he is responsible to the principal. And where he sells to his principal his land, he must acquaint the principal with such fact, upon default of which, he must refund to the principal the profit on the transaction.

2.

The other important feature of this case is the fact that not only did Ginnetti sell to his principal his own land at a profit, but he named himself as trustee in the deed of trust to secure the deferred purchase money, which he was foreclosing when this action was filed.

What is the legal effect of the situation where the trustee is the owner of the obligation for which the deed of trust is given as security? In *Earll v. Picken*, 72 App. D. C. 91, 113 F. 2nd 150, the court stated the proposition in this manner:

“Earll assumed inconsistent positions as trustee for the plaintiff and as owner of adverse interests in trust property, which he concealed by use of straw men and otherwise. . . .”

* * * *

“The issue which underlies all others in the case relates to the propriety of Earll’s purchase of the \$4,500 second trust note and the consequences which flow from that transaction. Defendants argue strenuously that there ‘was no impropriety or fraud in the purchase by Earll or his wife of a note secured by a deed of trust under which Earll was already a trustee.’ . . . They (cases) do not decide for whom the trustee takes title or whether he may so deal with the security interests as to make a profit for which he is not accountable to the cestuis. *Clearly he may not make such a profit, whether in the purchase or in the sale of, or other dealing with, that interest. . . .* If he . . . purchases an encumbrance upon trust property and pays less than the face amount of the encumbrance, he is not permitted to recover from the trust estate more than the amount which he paid for the encumbrance with interest thereon. . . . emphasis supplied.

How much more pertinent is the language of the above citation when the fact is revealed that the trustee is not only the party secured, but the agent for the purchaser and the previous owner who sold the land? It would be amazing to assume that a person occupying such extremely close and confidential relationships could be permitted or allowed to sell the land to his principal at a large profit, and threaten to foreclose when the principal balked at paying the profit on discovery and then have the aid of a court of equity in forcing payment from the principal of the profit or any part thereof.

Yet the amazing assumption set forth has happened. The trial court after making the findings of fact set forth, reduced the purchase money note by \$1,000, and then allowed the mortgage to be foreclosed in the event that the principal did not pay the balance. How the court arrived at a figure of \$1,000 is impossible to tell.

It is submitted that the position of the defendant in actually becoming the trustee of the plaintiffs was such as to preclude him from requiring the plaintiffs to pay any more than the actual cost of the note to him plus interest.

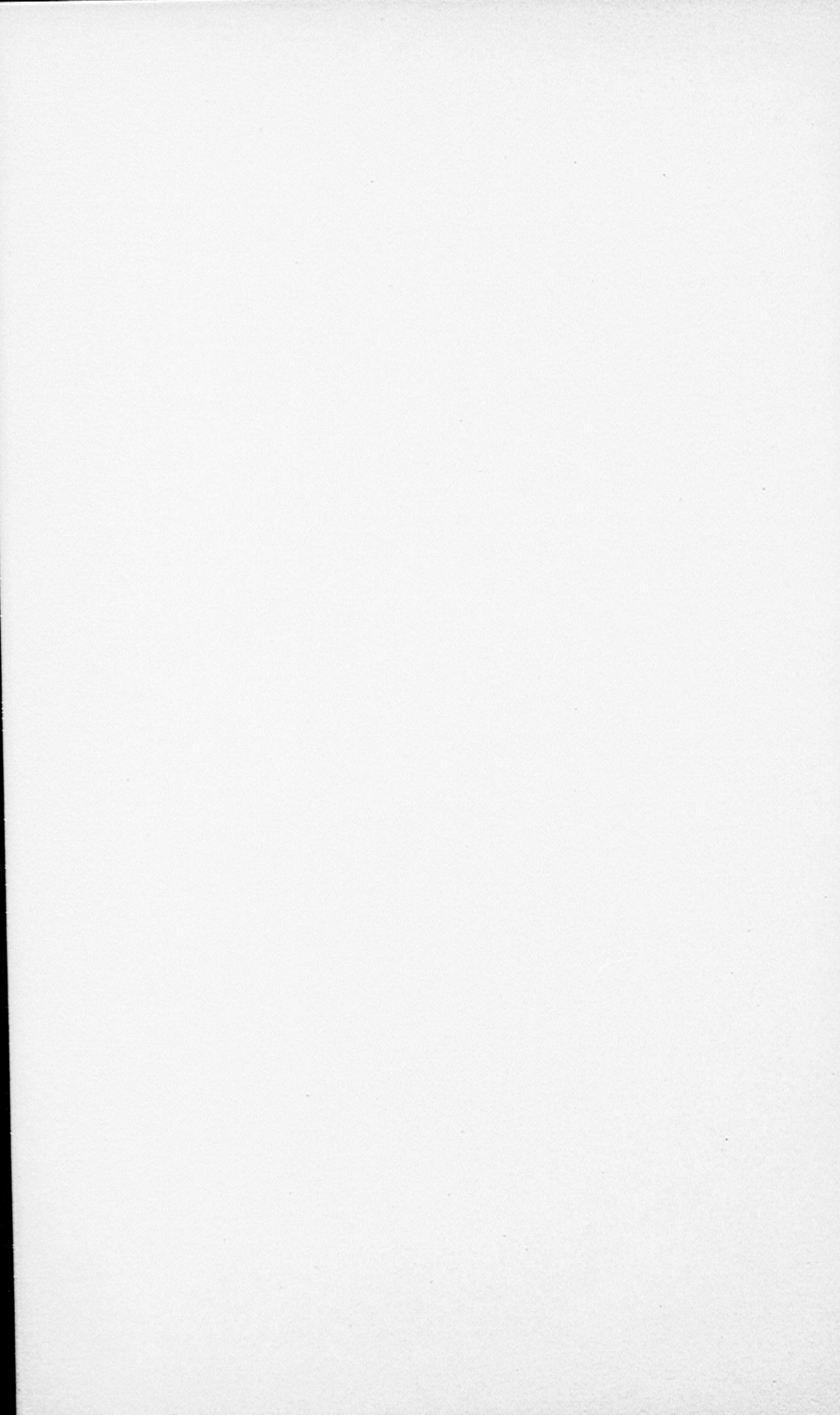
CONCLUSION

It is respectfully submitted that the judgment of the District Court should be reversed and the court should be ordered to enter judgment for the plaintiffs against the defendant in the amount representing the difference between the purchase price of the property to the defendant and the price at which it was sold to the plaintiffs or \$4,118.75.

ARTHUR L. WILLCHER
Attorney for Appellants.
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Washington, D. C.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,502

WILLARD J. HALL, SARA G. HALL,

Appellants,

v.

E. A. GINNETTI,

Appellee.

**Appeal from the United States District Court
for the District of Columbia**

JOINT APPENDIX

60

Filed May 4 1948 Harry M. Hull, Clerk
IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
DISTRICT OF COLUMBIA
WILLARD J. HALL, and SARA G. HALL
4614 15th Street, N. W.
Washington, D. C.
Plaintiffs

vs.

SOUTHERN REALTY CO.
a corporation
4934 Wisconsin Avenue, N. W.
Washington, D. C.
E. A. GINETTI
4934 Wisconsin Avenue, N. W.
Washington, D. C.
T. YATES GOLDSBOROUGH
4934 Wisconsin Avenue, N. W.
Washington, D. C.
ADELE PUGLIESE
3100 Connecticut Avenue, N. W.
Washington, D. C.
THORNTON W. OWEN
t/a THOS. J. OWEN & SON
Southern Building
Washington, D. C.
GLOBE INDEMNITY COMPANY
a corporation
1518 K Street, N. W.
Washington, D. C.

Defendants

Civil Action #1846 - '48

Complaint

(To Enjoin Foreclosure—Damages)

1. This is an action to enjoin the foreclosure of a deed of trust on real estate, located in the District of

Columbia, and to obtain a money judgment in excess of \$3,000, exclusive of interest and costs.

2. Sometime in March of 1947 the man plaintiff was introduced to the defendant, Ginetti, by the said plaintiff's employer as a real estate broker in whom said plaintiff could place every trust and confidence in the purchase of a home. At that time said plaintiff advised that defendant he was looking to buy a home for his wife and three children. Shortly thereafter said defendant advised him that he had premises listed for sale at 4614 15th Street, N. W., in the District of Columbia, at the price of \$18,500, and which said premises were owned by the defendant, Pugliese. He further stated that said premises were well worth such sum and that the owner would not accept any less price for the premises.

3. At the time the plaintiff was discussing the purchase of a home from said defendant, the aforesaid property was listed for sale with the Southern Realty Co., of which the defendants, Ginetti and Goldsborough, were the active stockholders and officers, by certain individuals at the price of \$18,000. Said defendants operated the Southern Realty Co., nominally a corporation, as a partnership.

4. The defendants, Ginetti and Goldsborough, intending to defraud said sellers and the plaintiffs did, while negotiating with the plaintiffs, advise said sellers that the property was not worth \$18,000; that it could not be sold for such sum but that if the sellers would accept \$14,750, the property could be sold, which the sellers agreed to do. In furtherance of their scheme to defraud the sellers and the plaintiffs, the said defendants did thereupon purchase said property in the sum of \$14,750 and did take title in the name of the defendant, Pugliesi, who is the sister of the defendant, Ginetti, and who merely acted as a straw title for the defendants, Ginetti, Goldsborough and Southern Realty Co.

5. The said defendants did thereupon sell said property to the plaintiffs for the sum of \$18,500 and did make certain title charges against said plaintiffs in the sum of \$168.10, although said plaintiffs never had a title search or settlement at any title company. The said defendants did then wrongfully and fraudulently pocket a secret profit of \$3,918.15, which they never turned over to the original sellers nor did said defendants ever at any time advise plaintiffs that the property could have been purchased for \$14,750 or was only worth said sum although said defendants occupied a position of trust and confidence with the plaintiffs and virtually acted in the transaction as their agent.

6. In consummating said sale, the plaintiffs did execute to the order of the defendant, Pugliese, a second trust note in the original amount of \$5,500, payable \$100 per month, which said note was endorsed by the defendant, Pugliese, without recourse and turned over to the defendants, Ginnetti, Goldsborough and Southern

62 Realty Co., who at the present time still have said note. To secure said note the plaintiffs signed a deed of trust on the aforesaid property, in which the defendants, Ginnetti and Goldsborough, are named as trustees, and recorded on May 23, 1947, among the land records of the District of Columbia as instrument No. 22535. Said defendants have threatened to foreclose said trust because of the alleged default in the payment of said note which plaintiffs deny and have engaged the defendant, Owen, to auction said property at public sale under said deed of trust, who has advertised said property to be foreclosed.

7. The defendants, Ginnetti and Goldsborough, are improper and unfit persons to act as trustees in said deed of trust; the said trust was fraudulently obtained and void; but said defendants will proceed with the foreclosure unless enjoined from doing so, in which event the plaintiffs will be irreparably injured.

8. Said defendants, E. A. Ginnetti and T. Yates Goldsborough, were bonded by the Globe Indemnity Company, in the sum of \$2,500, each, in accordance with the provisions of the Real Estate Brokers Act for the benefit of the plaintiffs and others similarly situated. The action of said defendants are a breach of said bonds and accordingly the surety is indebted to the plaintiffs in the amount of \$3,918.15.

Plaintiffs demand judgment, as follows:

1. The defendants be enjoined pendente lite and permanently from foreclosing the deed of trust against premises 4614 15th Street, N. W., recorded on May 23, 1947, among the land records of the District of Columbia as instrument No. 22535.

2. That the defendants, Ginnetti and Goldsborough, be removed as trustees in the deed of trust and other trustees substituted therein.

3. The plaintiffs be given judgment against the defendants, Ginnetti, Goldsborough, Southern Realty Co., Pugliese and Globe Indemnity Company in the sum of \$3,918.15, besides interest and costs.

4. For such other and further relief as may be proper.

/s/ Arthur L. Willcher
Arthur L. Willcher
Attorney for Plaintiffs
932 Investment Building
Washington, D. C.

• • • •

66 Filed May 15 1948 Harry M. Hull, Clerk

Answer of All Defendants

First Defense

The complaint fails to state a claim against these defendants upon which relief can be granted.

Second Defense

1 to 8, inclusive. Answering Paragraphs Nos. 1 to 8, both inclusive, these defendants aver that E. A. Ginnetti and T. Yates Goldsborough are duly licensed real estate brokers within the provisions of the Real Estate and Business Brokers License Act (50 Stat. 787, Ch. 760, Sections 1, et seq.), Title 45—1401, et seq., D. C. Code (1940 ed.); that, in the capacity of licensed brokers, the said E. A. Ginnetti and T. Yates Goldsborough received a listing from Mary D. Scott, et al., owners, for the sale of Premises 4614 Fifteenth Street, N. W.; that, pursuant to the employment thus established, the brokers advertised the property in the local newspapers in an effort to negotiate a sale thereof on behalf of the said owners; that, after reasonable efforts for such sale, the brokers were unable to attract a purchaser upon terms suitable to said owners; that, on or about 28 February, 1947, the said brokers notified Mary D. Scott, et al, owners, that Adele Pugliese, sister of E. A. Ginnetti, was anxious to acquire a home in contemplation of the marriage of her daughter; that with full knowledge of the identity of the proposed purchaser, the said Mary D. Scott, et al, at all times fully represented by
67 counsel, on 28 February, 1947, entered into a formal contract for the sale of the premises to Adele Pugliese for the sum of \$14,750.00, payable entirely in cash prior to the time of title transfer; that, under date 2 May, 1947, the fee-simple title to Premises 4614 Fifteenth Street, N. W., was duly transferred to

Adele Pugliese, under the supervision of the Realty Appraisal and Title Company, 1104 Vermont Avenue, N. W., and the proceeds of the entire purchase price was duly delivered to the owners pursuant to the terms of the contract of sale, the said Adele Pugliese bearing the expense of all title, conveyancing and noting fees, including title insurance against each and every type of title defect, all with the purpose of making Premises No. 4614 Fifteenth Street, N. W., the permanent and lasting dwelling for herself and her daughter's family and, in that such capacity, the said Adele Pugliese was the real and only party in interest in the full enjoyment of said title, executing to the W. R. Kelley Company, loan correspondents, in her sole and individual name, a first deed of trust upon the conveyed premises to secure an advance in the sum of \$11,500.00, which said advance, or the proceeds, thereof, were duly delivered to Mary D. Scott, et al, the sellers, the balance of said purchase price having been delivered to the sellers from the sole and separate funds of the said Adele Pugliese and with full knowledge of the said sellers; that the said Mary D. Scott, et al, and her counsel, well knew that it was impossible to sell, at that time, the said premises for any figure in excess of the agreed sales price upon a full cash basis and well know that such a price is unattainable upon the present market; that subsequent to the matters and things herienbefore mentioned, the plaintiffs, Willard J. Hall et ux Sara G. Hall, through inducements made by Cy Freedman, their agent, without any inducements whatsoever by any of the defendants named herein, harassed the said Adele Pugliese to dispose of said premises to them; that, on 14 May, 1947, the said Adele Pugliese entered into a contract of sale whereby she agreed to sell the said premises to Willard J. Hall and wife for the sum of \$18,500.00, payable \$1500.00 in cash, assumption of the existing \$11,500.00, senior lien, and the balance to be deferred over many

68 years in a junior deed of trust to secure a promissory note in the sum of \$5500.00; that the said Adele Pugliese agreed to the sale to Willard J. Hall and wife only because she, in the interim, had obtained an apartment for the use and enjoyment of her family, a matter which, had it previously occurred, would have relieved her of investing her funds in the above premises: that, under date 23 May, 1947, Adele Pugliese conveyed the title to Premises 4614 Fifteenth Street, N. W., to Willard J. Hall and Sara G. Hall, receiving the sum of \$1500.00 and the cash payment, the sum of \$187.65 for title charges and adjustments, and a promissory note in the amount of \$5500.00, dated 21 May, 1947, payable \$100.00 per month, and the said Adele Pugliese later rebated to the said new purchasers the sum of \$32.34 as an adjustment of accrued interest on the newly placed first deed of trust between the time of her recent purchase and the sale to Willard J. Hall and wife; that, thereafter, the said Willard J. Hall and wife were given possession of Premises No. 4614 Fifteenth Street, N. W., which they still enjoy; that the monthly payments on the deferred purchase junior lien were promptly paid for the months of July, 1947, to January 13, 1948, by the said purchasers but, since January 13, 1948, the said purchasers have defaulted in the monthly payments and presently they are \$400.00 in arrears, as well as in default in the monthly payments on the senior lien, and currently due real estate taxes, all in violation of the provisions of the deed of trust to secure the payment of the junior lien held by Adele Pugliese; that, under date 17 April, 1948, the said Willard J. Hall was notified as of these defaults and the fact that E. A. Ginnetti and T. Yates Goldsborough, Trustees, were being directed to exercise the power of sale contained in the said deed of trust; that the said obligors refused to bring these payments up to date and, as a consequence, the trustees directed a sale to be made by the firm of Thos. J. Owen

& Son, Auctioneers, which said sale, according to proper and timely public announcement in a newspaper of general circulation, is scheduled for Thursday, May 13, 1948, at 4:00 o'clock, p. m., in front of Premises No. 4614 Fifteenth Street, N. W., unless restrained by appropriate proceedings in the within civil action; that the said Willard J. Hall and Sara G. Hall are hopelessly insolvent and unable to discharge their ordinary
69 financial obligations, and the within proceedings are merely instituted to hinder, delay and defraud the holder of the said junior indebtedness; that, by virtue of the defaults in the payment of the monthly installments on the said junior indebtedness, the same has become a desperate obligation for which there is no ready market—either upon a discount basis or otherwise, and as a consequence, the said Adele Pugliese is actually faced with a considerable loss in the event the aforesaid premises fail to bring a sufficient sum to provide for the repayment of her original indebtedness; that, under date 17 April, 1948, Adele Pugliese offered to return the unpaid junior lien and discharge the said Willard J. Hall from any further obligation thereunder, if and when the said Willard J. Hall reconveyed the property and promptly surrendered possession thereof, which said offer was refused for the reason that the said owners, by leasing rooms therein, received \$100.00 per month income and, by reason of their continuance of occupancy in the face of total defaults, they can sufficiently “milk” the premises in an effort to recover the sums heretofore invested and thus place the entire loss upon the said Adele Pugliese; that the total sum invested in said premises by Willard J. Hall is \$3300.00, for which he has received a full year’s occupancy, as well as \$1200.00 income from subleasing and, as a consequence, the entire loss in the event of a foreclosure sale will be in the neighborhood of \$300.00, after deducting a reasonable rentable allowance for a year’s occu-

pancy; that said loss to Willard J. Hall is not in any-wise proportionate to the possible losses of Adele Pugliese in the event of the continued "milking" of the premises by Willard J. Hall; that the defendants herein deny any fraudulent representation, profits or any other matters which would tend to taint or impinge the foregoing transactions but, on the contrary, aver that the plaintiffs are merely following a systematic scheme of abuse of judicial processes to hinder and delay the said Adele Pugliese and to bring unnecessary monetary loss upon the said holder of the junior lien; that the defendants, E. A. Ginnetti and T. Yates Goldsborough, trustees named in the aforesaid junior deed of trust, have no financial interest whatsoever in the said indebted-

70 ness, or in any of the income, profits or increment thereof, and can properly act as trustees thereunder, as will appear from the affidavit attached hereto and marked "Defendants' Exhibit A", and prayed to be made a part hereof.

WHEREFORE, the defendants having fully answered the complaint, pray that the same be dismissed with costs to the defendants.

KEANE AND WILNER

* * * *

76 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 1

At the time Hall signed the contract for the purchase of 4614 - 15th Street, N. W., who was the owner of the property? Mr. Ginnetti or Mrs. Pugliesi?

Answer: Mr. Ginnetti.

* * * *

77 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 2

If you find that Ginnetti was the owner at the time of the Hall contract, did he disclose that fact to Hall?

Answer: No.

* * * *

78 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 3

At the time Hall signed the contract for the property, did he know that Mrs. Pugliesi was Mr. Ginnetti's sister?

Answer: No.

* * * *

79 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 4

Did Hall employ Ginnetti as his representative?

Answer: Yes.

* * * *

80 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 5

A. Did Ginnetti say to Hall "the owner will not take less."

Answer: Yes.

B. If your answer to A was yes, was the statement true or false?

Answer: True.

* * * *

81 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 6

Did Mrs. Pugliesi or Mr. Ginnetti own the second trust note?

Answer: Genetti.

* * * *

82 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 7

Did Hall commence negotiations with the defendants for the purchase of the 15th Street house prior to the Dwyer contract of February 28, 1947?

Answer: No.

* * * *

83 Filed Jul 2 1948 Harry M. Hull, Clerk

What was the fair market sales value of premises No. 4614 15th Street, N. W., on the 14th day of May, 1947, based upon a \$1500.00 cash payment, a \$11,500.00 first deed of trust indebtedness and the balance of the said sales price evidenced by a second deed of trust bearing interest at the rate of 6% per annum, payable, principal and interest, in monthly installments of \$100.00, with the balance of the principal remaining unpaid to be payable in full within four years?

Answer: \$18500

* * * *

84 Filed Jul 2 1948 Harry M. Hull, Clerk

Interrogatory No. 9

What was the fair market value, on the 21st day of May, 1947, of the second trust note executed by Willard

J. Hall and Sara G. Hall in the amount of \$5500.00, bearing interest at the rate of 6% per annum, payable \$100.00 per month, said monthly payments to be applied first to the payment of accrued interest and the balance applied to the payment of the principal remaining unpaid, with the unpaid balance of the principal due and payable four years from date?

Answer: \$3250

* * * *

85 Filed Jul 16 1949 Harry M. Hull, Clerk

*Judgment on Special Verdict and Order
Vacating Restraining Order*

This cause came on for trial before the court and jury and upon full consideration of the special questions submitted and answered by the jury, and the evidence and arguments of counsel, the pleadings, briefs and the court being fully advised in the premises, it is this 16th day of June, 1949;

ORDERED, ADJUDGED and DECREED, that the plaintiffs, Willard J. Hall and Sara G. Hall, recover of the defendant, E. A. Ginnetti, the sum of One Thousand (\$1,000.00) Dollars, with costs, provided, however, that execution therefor is stayed for a period of thirty (30) days during which time the said E. A. Ginnetti may fully discharge and satisfy said judgment by crediting upon the promissory note made by the plaintiffs and described in paragraph six (6) of the complaint in an amount equivalent to One Thousand (\$1,000.00) Dollars and costs; and the said E. A. Ginnetti, by filing an affidavit herein within said period of stay stating that he is the present holder of said indebtedness, and that said One Thousand (\$1,000.00) Dollars and costs have been duly credited thereon, shall be fully discharged from the meaning and effect of this judgment.

ADJUDGED, that this action be and it hereby is dismissed on the merits as against the defendants, Southern Realty Company, a corporation, T. Yates
86 Goldsborough, Adele Pugliese, Thornton W. Owen, and Globe Indemnity Company, a corporation.

ADJUDGED, that the temporary restraining order issued herein against the named defendants be and the same is hereby dissolved, vacated and set aside without costs, fees or expenses in relation thereto to either plaintiffs or defendants.

/s/ H. A. Schweinhaut
Judge

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89 Filed Oct 6 1949 Harry M. Hull, Clerk

*Findings of Fact to Accompany Dissolution
of Preliminary Injunction*

1. The plaintiffs are the owners of Premises No. 4614 - 15th Street, N. W., which they purchased on May 14, 1947, from Adele Pugliese, a straw party for E. A. Ginnetti, for the sum of Eighteen Thousand, Five Hundred (\$18,500.00) Dollars, payable as follows: \$1500.00 as a cash payment, assumption of an existing secured indebtedness in the sum of \$11,500.00, and the execution and delivery of a deferred purchase deed of trust securing a junior indebtedness in the amount of \$5500.00, payable \$100.00 per month, including principal and interest at the rate of 6%, payable monthly with the entire unpaid balance thereof due and payable four (4) years after date. In the deferred purchase junior deed of trust, defendants E. A. Ginnetti and T. Yates Goldsborough were named trustees to exercise powers of sale contained in the deed of trust in the event of defaults in any of the terms thereof. That E. A. Ginnetti was, in truth and in fact, the owner of the property sold to the plaintiffs and, also, became the owner of the said

junior indebtedness in the amount of \$5500.00, which said latter ownership of the note existed at the time of the filing of the within proceedings. Under date June 16, 1948, with the consent of the parties hereto, the said trustees, E. A. Ginnetti and T. Yates Goldsborough, resigned. Thereafter, suitable disinterested persons were substituted as trustees, namely, V. Stuart Davis and Eugene Halley, persons with whom the court is fully acquainted and in whom the responsibilities of the trust may well be reposed.

90 II. The defendant, E. A. Ginnetti, purchased Premises No. 4614 - 15th Street from N. Monica Dwyer, Adelaide D. Ewell, and Mary D. Scott, joint owners on February 28, 1947, for the sum of \$14,750.00 in cash for the full amount thereof; That E. A. Ginnetti, in Civil Action No. 1972 - '48, was sued for damages by the said vendors, N. Monica Dwyer, et al, in which complaint it was alleged that the said E. A. Ginnetti had failed to disclose the fact that he was purchasing the property on his own account and, therefore, the said E. A. Ginnetti became liable for all profits resulting from any re-sale of said premises, particularly, to Willard J. Hall and Sara G. Hall, the plaintiffs herein, and liable for the amount of the sales commission paid by N. Monica Dwyer, et al, in the amount of \$737.50. At the request of Willard J. Hall and Sara G. Hall, the N. Monica Dwyer, et al, action was consolidated for trial with the within proceedings. Prior to submission of the N. Monica Dwyer, et al, grievance to the jury for determination, the parties thereto settled their controversy by payment of \$1500.00 by E. A. Ginnetti to the complainants, which settlement was effected with the approval of the court as a compromise and settlement of the N. Monica Dwyer, et al, portion of the consolidated trial.

III. The sales commission in the N. Monica Dwyer, et al, controversy amounting to \$737.50, was divided by E. A. Ginnetti and T. Yates Goldsborough as a result

whereof E. A. Ginnetti received the sum of \$368.75 as a commission from the N. Monica Dwyer, et al, transaction; that as a result of the settlement of the N. Monica Dwyer, et al, civil action, E. A. Ginnetti has in legal contemplation and as a fact, invested in the aforesaid premises the sum of \$16,250.00, less the aforesaid commission item of \$368.75, i. e., \$15,881.25, all of which is in cash funds.

IV. E. A. Ginnetti, on May 14, 1947, after he had purchased the premises from N. Monica Dwyer, et al, thereupon sold the premises to Willard J. Hall and Sara G. Hall upon the deferred purchase plan described in Item I hereof for \$18,500.00. In this latter
91 transaction, he did not disclose to the purchasers, Willard J. Hall and Sara G. Hall, the fact that he was the owner thereof, although the said E. A. Ginnetti had been employed by purchasers as their agent to find a residence for their use and occupancy. Insofar as any claims for monetary damages are concerned, particularly, with respect to the matter of alleged profits inuring to the defendant, E. A. Ginnetti, and as these items may relate to the maintenance of injunctive process herein, the court adopts the answers to the special interrogatories made by the jury in reference to the deferred purchase value of the premises as of the date of sale to Willard J. Hall and Sara G. Hall.

*Conclusions of Law to Accompany Dissolution
of Preliminary Injunction*

1. The entry of judgment filed herein on June 16, 1948, upon the special verdict herein disposes of any and all monetary claims which the plaintiffs, Willard J. Hall and Sara G. Hall, have against the defendant, E. A. Ginnetti, or any of the remaining defendants, including alleged claims for title charges and any and all damages resulting from any breach of duty on the part of E. A. Ginnetti as a representative of the plaintiffs.

2. The substitution, by order entered herein on June 16, 1948, of V. Stuart Davis and Eugene Halley as trustees under the junior deed of trust indebtedness removes any defect in the right, title or powers of a trustee to act thereunder, and restores to the indenture its proper effectiveness.

3. Under the circumstances, there is no basis for the continuance of a preliminary injunction heretofore issued against the defendants in the proceedings herein.

/s/ H. A. Schweinhaut

Judge

Oct. 6, 1949

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93 Filed Oct 13 1949 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given this 13th day of October, 1949, that Willard J. Hall and Sara G. Hall hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court on the 13th day of October, 1949 vacating the restraining order and rendering plaintiffs' judgment against said defendant, E. A. Ginnetti only, in the amount of One Thousand Dollars (\$1,000.00)

/s/ Arthur L. Willcher
Attorney for Plaintiffs
Investment Building
Washington, D. C.